

MAY 31 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

Mehrzad Movassaghi

Serial No.: 10/530,014

Filing Date: October 1, 2003

Title: MULTIPLE PLATE
COMBUSTOR)
)
) Customer No. 32084
)
) Atty No. 1491-148
)
)
) Petitions Examiner:
) Richard M. Ross
)
)

The Honorable Commissioner of
Patents and Trademarks
Office of the PCT Legal Administration

Dear Mr. Ross:

RENEWED PETITION UNDER 37 CFR 1.47(b)

Pursuant to 37 CFR 1.47(b), Applicant hereby requests reconsideration of the dismissal of Applicant's Petition filed December 16, 2005.

Please find attached the following documents:

1. Declaration of Abolghassem Aghtai, President of Fama Holdings Ltd.;
2. Supplemental Declaration of Clifford W. Vermette, in support of Petition under 37 CFR 1.47(b); and
3. Memorandum of Law of Mark Pospisilik, solicitor for Fama Holdings Ltd.

The foregoing documents address all of the outstanding issues mentioned in the Decision on Petition Under 37 CFR 1.47(b) of March 31, 2006. More specifically, the Declaration of Clifford W. Vermette establishes that Dr. Movassaghi, the inventor, met with Mr. Vermette at Mr. Vermette's office where

the complete file including the specification, drawings and claims as well as the Declaration and Power of Attorney and Assignment documents were before Dr. Movassaghi at the time he signed a letter refusing to execute these documents. This letter was previously filed.

A Declaration and Power of Attorney document signed by the president of Applicant, Fama Holdings Ltd., of and as agent for Dr. Movassaghi is submitted.

As evidence that the applicant has sufficient proprietary interest in the subject matter to justify the filing of the application, a legal memorandum of Mark Pospisilik, a lawyer, is provided.

Finally, an express statement that the granting of the present petition is necessary to preserve the rights of the parties or to prevent irreparable damages has been added to the Declaration of Abolghassem Aghtai.

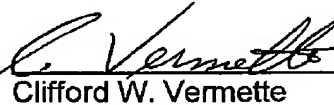
Accordingly, Applicant respectfully request reconsideration of the decision.

This request for reconsideration is submitted in the belief that no fee is required.

Respectfully submitted,

Dated: May 31, 2006

By:



Clifford W. Vermette
Reg. No. 30,018
Attorney for Applicant

Vermette & Co.
Box 40 Granville Square,
Suite 230, 200 Granville Street
Vancouver, British Columbia,
V6C 1S4 Canada

Tel:(604) 331 0381
Fax:(604) 331 0382

MAY 31 2006

IN THE UNITED STATES PATENT AND TRADEMARKS OFFICE

| | | |
|----------------------------------|---|------------------------------|
| In re the Application of: |) | |
| Mehrzad Movassaghi |) | Attorney Docket No. 1491-148 |
| Serial No.: 10/530,014 |) | |
| Filing Date: 10/01/2003 |) | |
| Priority Date: 10/01/2002 |) | |
| Entry Date: April 2, 2005 |) | |
| Int'l Appln. No.: PCT/CA03/01514 |) | |
| Title: MULTIPLE PLATE COMBUSTOR |) | |

May 30, 2006

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

DECLARATION

*ABOLGHASSEM*I, ~~Kassem~~ Aghtai, President of Fama Holdings Ltd., declare as follows:

1. I have been an officer of Fama Holdings Ltd. (hereinafter called "Fama") from at least as early as October 1, 2002 up until the present time.
2. The principals of Fama first became acquainted with Dr. Mehrzad Movassaghi and Powertech Industries Inc. (Powertech) on or about 1995 when Dr. Movassaghi introduced Fama to a combustor he had been working on. At the time Dr. Movassaghi was a shareholder and president of Powertech, the company through which initial development of the combustor was carried out. I believe that the primary purpose of Dr. Movassaghi's employment with Powertech was to develop the combustor. Dr. Movassaghi had no employment agreement or technology assignment agreement with Powertech. Fama became interested in the concept and decided that Fama should become involved in supporting the further development of the combustor. Sixty percent of the issued and outstanding shares of Powertech were acquired by Fama.
3. The principals of Fama caused a wholly owned B. C. Company by the name of Gasmaster Industries Inc. (Gasmaster) to be incorporated and had all further development work on the combustor done by Gasmaster. Dr. Movassaghi was hired as a consultant to Gasmaster and charged with the job of developing the combustor into a commercially acceptable product. Dr. Movassaghi reported to me.
4. Dr. Movassaghi was to participate in the further development of the combustor with all of the patent applications being filed in the name of Powertech. Dr. Movassaghi cooperated in making these filings including executing the Power of Attorney document, a copy of which is annexed hereto to this my Declaration and marked as Exhibit A. Exhibit A identifies Powertech as the owner of the patent rights in the Multiple Plate Combustor. It was Powertech's intention to exploit the Multiple Plate Combustor as part of a commercial boiler system. Dr. Movassaghi worked on the boiler system and was aware of our intention to exploit the patent rights.

5. Dr. Movassaghi was paid on a regular basis by Gasmaster. He was free to use and did use Gasmaster's employees and facilities and obtained supplies through Gasmaster for his development work. Legal fees for preparation and prosecution of patent applications for the Multiple Plate Combustor were paid by Gasmaster and Powertech. Vermette & Co., the agents charged with preparing and prosecuting the patent applications took instructions from Gasmaster and Powertech. Both Gasmaster and Powertech were funded solely by Fama.

6. On or about September, 2004, the employment of Dr. Movassaghi by Powertech was terminated due to significant and irreconcilable differences.

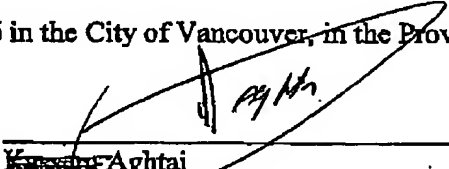
7. On September 30, 2004, Powertech, Gasmaster and Fama entered into an agreement under which Fama was to acquire on closing (November 30, 2004) and did acquire all of the Intellectual Property, namely, all patents and patent applications of Powertech. In return Fama forgave \$900,000 of Powertech debt and paid off all Powertech and Gasmaster debt and discharged all of Powertech's liabilities.

8. Copies of the first 4 pages of an Agreement for Purchase and Sale of Assets corresponding to this sale are annexed to this my Declaration and marked as Exhibit B. Assignments from Powertech to Fama are presently being secured for various countries in which patent applications have been filed and these executed assignments will be filed shortly.

9. Granting of the present petition is necessary to preserve the rights, of the parties or to prevent irreparable damages.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States

Declared this 31 day of May, 2006 in the City of Vancouver, in the Province of British Columbia, Canada.


ABOLGHASSEM Koushik Aghtai
President, Fama Holdings Ltd.

Docket No. 1491-148

DECLARATION AND POWER OF ATTORNEY

As a below-named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below beneath my name,

I believe I am a joint inventor of the subject matter, which is claimed and for which a patent is sought on the invention entitled:

MULTIPLE PLATE COMBUSTOR

the specification of which (check one):

☐ is attached hereto.

☒ was filed on _____, as Application Serial No. 10/530,014.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendments referred to above.


I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR § 1.56.

I hereby claim foreign priority benefits under 35 United States Code § 119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or § 365(a) of any PCT International application which designated at least one country other than the United States, listed below and have also identified below any foreign application for patent or inventor's certificate, or PCT International application having a filing date before that of the application on which priority is claimed:

| Prior Foreign Application(s) | | | Priority Claimed | |
|------------------------------|--------------|------------------------|------------------|----|
| <u>T02002A00850</u> | <u>Italy</u> | <u>1/October/2002</u> | <u>X</u> | |
| (number) | (country) | (day/month/year filed) | yes | no |

I hereby claim the benefit under 35 United States Code § 120 of any United States application(s), or § 365(c) of any PCT International application designating the United States, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of 35 United States Code § 112, I acknowledge the duty to disclose information which is material to the patentability as defined in 37, Code of Federal Regulations § 1.56 which became available between the filing date of the prior application and the national or PCT International filing date of this application.

| | | |
|--------------------------|------------------------|--|
| <u>PCT/CA03/001514</u> | <u>October 1, 2002</u> | <u>Completed</u> |
| (Application Serial No.) | (Filing Date) | Status: (Patented, Pending, Completed) |

This is Exhibit A referred to in the
declaration of Abolghassem Aghtai
sworn before me at Vancouver
this 31 day of May 06

A Commissioner for Taking Declaration
for British Columbia

2

POWER OF ATTORNEY: As a named inventor, I hereby appoint the following as my attorneys and/or agents, with full powers of substitution and revocation, to prosecute this application and transact all business in the Patent & Trademark Office connected therewith:

Clifford W. Vermette**Reg. No. 30,018****Customer Number: 32084**

SEND CORRESPONDENCE TO: Vermette & Co.
Box 40, Granville Square
Suite 230, 200 Granville Street
Vancouver, British Columbia
Canada V6C 1S4

DIRECT TELEPHONE CALLS TO: Clifford W. Vermette at (604) 331-0381

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Sole Inventor:

Full Name: Mehrzad Movassaghi

Signature:

By: Fama Holdings Ltd. as representative for
Mehrzad Movassaghi

date:

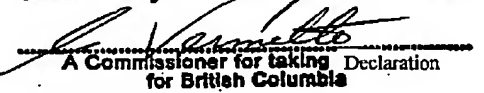
May 31 / 2006

Citizenship: Canadian

Residence Address: 2316 West 13th Avenue
Vancouver, British Columbia
Canada V6K 2S6

Post Office Address: same

AGREEMENT OF PURCHASE AND SALE OF ASSETS

This is Exhibit B "referred to in the
declaration of Abolghassen Aghtai
sworn before me at Vancouver
this 31 day of May 2006

A Commissioner for taking Declaration
for British Columbia

THIS AGREEMENT dated for reference the 30th day of September, 2004.

BETWEEN:

POWERTECH INDUSTRIES INC., of Suite 1700 - 1095 West
Pender Street, Vancouver, British Columbia V6E 2M6

(hereinafter referred to as "Powertech")

AND:

GASMASTER INDUSTRIES INC., of Suite 1700 - 1095 West Pender
Street, Vancouver, British Columbia V6E 2M6

(hereinafter referred to as "Gasmaster")

AND:

FAMA HOLDINGS LTD., of Suite 1700 - 1095 West Pender Street,
Vancouver, British Columbia V6E 2M6

(hereinafter referred to as "Fama")

WHEREAS:

- A. Powertech is the legal and beneficial owner of the Purchased Assets (as hereinafter defined) and;
- B. Powertech desires to sell to Fama and Fama wishes to purchase from Powertech the Purchased Assets.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

1. Definitions

1.1 Where used in this Agreement or in any amendment, the following terms shall have the following meanings respectively:

- (a) "Agreement" means this Agreement of Purchase and Sale, including all schedules, and all instruments supplemental to or in amendment or confirmation of this Agreement;
- (b) "Business Day" means a day other than a Saturday, Sunday or statutory holiday, on which the principal chartered banks located in the City of Vancouver are open for business during normal banking hours;

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- 2 -

- (c) "Closing" means the completion of the sale to and purchase by Fama of the Purchased Assets under this Agreement;
- (d) "Closing Date" means November 30, 2004 or such other date as the Parties may agree;
- (e) "Gasmaster Debt" means all amounts owed by Gasmaster to Powertech, plus accrued interest thereon, as of the Closing Date;
- (f) "Powertech Debt" means all amounts owed by Powertech to Fama, plus accrued interest thereon, as of the Closing Date;
- (g) "Intellectual Property" means those patents and patent applications set forth on Schedule "A" hereto and includes, without limitation:
 - (i) all right, title and interest of Powertech in, to and under all contracts and agreements and other rights of or pertaining to the Intellectual Property;
 - (ii) all right, title, benefit and interest of Powertech in respect of all registered or unregistered trade marks, logos and trade names of or pertaining to the Intellectual Property and all additions, modifications and extensions thereof;
 - (iii) all patterns, designs, research data, copyrights, trade secrets and other proprietary know-how, processes, drawings, technology, equipment and descriptions and related instructions, manuals, data, records and procedures and any and all data arising from the Intellectual Property and all licenses, agreements and other contracts and commitments relating to any of the foregoing;
 - (iv) all amounts prepaid in connection with the Intellectual Property; and
 - (v) all books and records and files relating to the Intellectual Property stored on any type of media including, without limitation, all production, and customer records and lists (containing addresses, phone numbers and business contacts of such customers) and all correspondence, research materials, contract documents, licenses and permits;
- (h) "Parties" means Powertech, Gasmaster and Fama, collectively, and "Party" means any one of them;
- (i) "Purchased Assets" means all of the Purchased Shares, the Intellectual Property and the Gasmaster Debt;
- (j) "Purchased Shares" means all of the issued and outstanding common shares of Gasmaster; and
- (k) "Purchase Price" means:
 - (i) the sum of \$900,000 to be paid by Fama forgiving all of the Powertech Debt; and

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- 3 -

- (ii) the discharge by Fama of all of Powertech's liabilities, other than the Powertech Debt, owing as of the Closing Date.

2. **Schedules**

2.1 The following schedules are attached to and incorporated in this Agreement by reference:

- (a) Schedule "A" - Intellectual Property;
- (b) Schedule "B" - Release; and
- (c) Schedule "C" - Indemnity.

3. **Purchase and Sale**

3.1 Subject to the terms and conditions of this Agreement, and subject to any adjustments provided herein, Powertech agrees to sell, assign and transfer to Fama and Fama agrees to purchase from Powertech, the Purchased Assets, on the Closing Date.

3.2 As consideration for the acquisition of the Purchased Assets by Fama, Fama shall pay the Purchase Price to Powertech immediately following the transfer to Fama of the Purchased Assets on the Closing Date such Purchase Price to be allocated as follows:

- (a) \$1.00 to the Purchased Shares;
- (b) \$1.00 to the Gasmaster Debt; and
- (c) the remainder to the Intellectual Property.

3.3 Fama covenants and agrees that, on the Closing Date:

- (a) it will execute the Mutual Release attached hereto as Schedule "B";
- (b) it will discharge all of Powertech's other liabilities owing as of the Closing Date; and
- (c) it will execute an Indemnity in favour of Powertech in the form attached hereto as Schedule "C".

3.4 Gasmaster covenants and agrees that, on the Closing Date, it will execute the Mutual Release attached hereto as Schedule "B".

3.5 Powertech covenants and agrees that, on the Closing Date, it will execute the Mutual Release attached hereto as Schedule "B".

4. **Closing**

4.1 The Closing shall take place at 10:00 a.m. (Vancouver time) on the Closing Date at the offices of the solicitors for Powertech, Anfield Sujir Kennedy & Durno at Suite 1600 - 609 Granville Street, Vancouver, British Columbia, V7Y 1C3.

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- 4.2 At the Closing, Powertech and Gasmaster shall execute and deliver to Fama all bills of sale, assignments, instruments of transfer, deeds, assurances, consents and other documents as shall be necessary to effectively transfer to Fama all of Powertech's right, title and interest in, to and under, or in respect of, the Purchased Assets, and shall deliver up to Fama possession of the Purchased Assets, free and clear of any liens, charges or encumbrances or rights of third persons. Powertech and Gasmaster shall co-operate with Fama, at such time or thereafter, in effecting all registrations, recordings and filings with public authorities as may be reasonably required in connection with the transfer of ownership to Fama of the Purchased Assets.
- 4.3 At the Closing, Fama shall execute and deliver to Powertech:
- (a) the Release in the form attached hereto as Schedule "B"; and
 - (b) the Indemnity in the form attached hereto as Schedule "C".
- 4.4 Provided that Powertech has designated amounts to the maximum extent permitted under section 80 of the *Income Tax Act* (Canada) in respect of the forgiveness of the Powertech Debt, Gasmaster agrees to enter into an agreement in prescribed form T2156, to transfer forgiven debt under section 80.04 of the *Income Tax Act* (Canada).
5. **Representations and Warranties**
- 5.1 **Representations and warranties of Powertech.** Powertech represents and warrants to and with Fama that:
- (a) Powertech has all necessary power, corporate or otherwise, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Powertech;
 - (b) Powertech is the legal and beneficial owner of the Purchased Assets with good and valid title, free and clear of any mortgages, liens, charges, pledges, security interests or encumbrances or any rights of others to acquire any ownership interest in any of the Purchased Assets (other than such as may be held by Fama) and, subject to any licenses that Powertech has granted Gasmaster concerning the Purchased Assets, is exclusively entitled to possess and dispose of the same;
 - (c) Powertech does not have any outstanding agreement, contract or commitment, whether written or oral, of any nature or kind whatsoever, concerning the Purchased Assets of which Fama is not aware;
 - (d) Powertech is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada);
 - (e) this Agreement constitutes a legal, valid and binding obligation of Powertech, enforceable against it in accordance with the terms of this Agreement, subject, however, to limitations with respect to enforcement imposed by-law in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific

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CENTRAL FAX CENTER**MAY 31 2006****IN THE UNITED STATES PATENT AND TRADEMARKS OFFICE**

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| In re the Application of: |) | |
| Mehrzad Movassaghi |) | Attorney Docket No. 1491-148 |
| Serial No.: |) | 10/530,014 |
| Filing Date: |) | 10/01/2003 |
| Priority Date: |) | 10/01/2002 |
| Entry Date: |) | April 2, 2005 |
| Int'l Appln. No.: |) | PCT/CA03/01514 |
| Title: MULTIPLE PLATE COMBUSTOR |) | |

May 31, 2006

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

**SUPPLEMENTAL DECLARATION OF CLIFFORD W.
VERMETTE IN SUPPORT OF PETITION UNDER 37 CFR 1.47**

I, Clifford W. Vermette, Patent Agent for Powertech Industries Inc. and for Fama Holdings Ltd., declare as follows:


On or about December 7, 2005, the inventor, Dr. Mehrzad Movassaghi, met with me in my office to discuss signing the Declaration and Power of Attorney document and the Assignment document. At that meeting the Powertech Industries Inc. U.S. Patent file for the Multiple Plate Combustor was before Dr. Movassaghi and contained a complete copy of the patent application including specification, claims and drawings in addition to the Declaration and Power of Attorney document and the Assignment document. The foregoing file and documents were before Dr. Movassaghi prior to his signing our letter dated December 7, 2005, indicating his refusal to execute said Declaration and Power of Attorney document and said Assignment document. In my previous Declaration I indicated that these documents were sent by mail to the inventor. However, this was due to an error in communication with my paralegal. My office had previously sent these documents with the exception of the application to Dr. Movassaghi with a request to execute a refusal on a copy of that letter if Dr. Movassaghi refused to sign the Declaration and Power of Attorney and Assignment, but not with the application included. It was subsequent to sending the aforementioned documents to Dr. Movassaghi that Dr. Movassaghi attended at my office to discuss our letter request and, at which meeting the file containing the complete application and the Declaration and Power of Attorney and Assignment documents were before Dr. Movassaghi. Dr. Movassaghi signed a copy of our letter to him indicating his refusal to execute these documents.

On or about September 30, 2004, Powertech Industries entered into a purchase and sale of assets agreement under which Fama Holdings Ltd. purchased all of the rights to the invention

herein. Assignments are currently being obtained and it is expected that they will be filed in the near future.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: May 31, 2006


Clifford W. Vermette

Vermette & Co.
Box 40 Granville Square
Suite 230-200 Granville Street
Vancouver, British Columbia
V6C 1S4

Telephone: 604-331-0381
Facsimile: 604-331-0382

RECEIVED
CENTRAL FAX CENTER**MAY 31 2006****IN THE UNITED STATES PATENT AND TRADEMARKS OFFICE**

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|---------------------------|---|------------------------------|
| In re the Application of: |) | |
| Mehrzad Movassaghi |) | Attorney Docket No. 1491-148 |
| Serial No.: |) | 10/530,014 |
| Filing Date: |) | 10/01/2003 |
| Priority Date: |) | 10/01/2002 |
| Entry Date: |) | April 2, 2005 |
| Int'l Appln. No.: |) | PCT/CA03/01514 |
| Title: |) | MULTIPLE PLATE COMBUSTOR |

May 31 2006

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

MEMORANDUM OF LAW

This memorandum deals with the issue of whether or not Applicant has sufficient proprietary interest in the invention of U.S. Patent Appln. No. 10/531,014, filed on October 1, 2003, by Mehrzad Movassaghi, to justify filing the application.

The parties involved in the development of the Multiple Plate Combustor and referred to in the supporting Declarations of Abolghassem Aghtai and Clifford Vermette are all Canadian residents, citizens and/or corporations. All of the acts referred to in the Declarations are believed to have taken place in Canada. Therefore, the respective rights of the parties are determined by Canadian law.

The Declaration of Abolghassem Aghtai establishes that the Inventor, Dr. Mehrzad Movassaghi, was an employee of Powertech Industries Inc. (Powertech) and a consultant to Gasmaster Industries Inc., (Gasmaster) at the time of the development of the Multiple Plate Combustor invention and at the time the present patent application was filed. Thus, the ownership of the present patent application is determined in the context of (a) the employer-employee relationship between Dr. Movassaghi and Powertech, and (b) the consultancy relationship between Gasmaster and Dr. Movassaghi.

Since both Gasmaster and Powertech are now owned by Applicant, Fama Holdings Ltd., (see Declaration of Abolghassem Aghtai, Exhibit B) ownership of the Multiple Plate Combustor invention by either Gasmaster or Powertech evidences ownership of the invention by Applicant, Fama Holdings Ltd.

(a) Employment

Since Dr. Movassaghi had no written agreement with Powertech regarding ownership of patents or inventions, such rights are governed by the common law regarding the ownership of inventions by employers and employees. As set forth in Comstock Canada v. Electec Ltd., 38 C.P.R. (3d) 29 (Fed. Ct., Trial Div.) the general principle, in relation to employees' inventions, is that an invention made by a servant, (i.e. employee) while in the employ of his master, belongs to the servant and not to the master.

In *Comstock* the Court articulated two exceptions to the presumption favoring the inventive employee:

- 1) an express contract to the contrary, or
- 2) where the person was employed for the purpose of inventing or innovating, which requires considering the nature and context of the employer/employee relationship, which includes consideration of the following factors:
 - a) the express purpose of employment;
 - b) whether the employee at the time he was hired had previously made inventions;
 - c) whether an employer had incentive plans encouraging product development;
 - d) whether conduct of the employer once the invention had been created suggested ownership was held by the employer;
 - e) whether the invention is the product of a problem the employee was instructed to solve, (i.e., whether it was his duty to make inventions);
 - f) whether the employee's inventions arose following his consultation through normal company channels (i.e., was help sought);
 - g) whether the employee was dealing with highly confidential information or confidential work;
 - h) whether it was a term of the servant's employment that he could not use the idea which he developed to his own advantage.

In respect of the present application, the second exception, and factors (a), (b) and (d) listed thereunder, are most relevant.

According to the Declaration of Abolghassem Aghtai, Dr. Movassaghi, a scientist with experience in the field of combustor design, was employed by Powertech up until September 2004. The primary purpose of Dr. Movassaghi's employment with Powertech was to develop a combustor.

At the time that Fama Holdings Ltd. acquired a controlling interest in Powertech, Dr. Movassaghi had previously made at least one similar invention, namely, a Pulse Combustor, for which he was issued U.S. Patent 4,968,244, on November 6, 1990 (U.S. Appln. No. 362,818, filed June 7, 1989).

Once the Multiple Plate Combustor had been invented, the conduct of Powertech suggests that ownership of the invention had been transferred to Powertech (i.e. the patent application was filed in the name of Powertech; the Power of Attorney which referred to Powertech as the owner of the patent rights was signed by Dr. Movassaghi; the Agreement for Purchase and Sale of Assets names Powertech as the legal and beneficial owner of International Patent Application PCT/CA2003/001514, the parent of the present U.S. application; and Powertech instructed and paid the patent agents handling the application).

Thus, according to the rule laid out in *Comstock*, the invention made by Dr. Movassaghi, the Multiple Plate Combustor of the present application, belongs to the employer, Powertech (i.e. it falls under the second exception to the presumption that employees retain title to their own inventions). Therefore, as a result of the Agreement referred to in the Declaration of Abolghassem Aghtai (Exhibit B) between Fama Holdings Ltd., Powertech and Gasmaster, ownership of the Multiple Plate Combustor invention passed to Fama Holdings Ltd.

(b) Consultancy

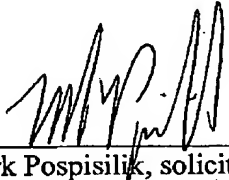
Generally, an independent consultant who makes an invention owns the invention unless there is an agreement, express or implied, to the contrary. Whether a term transferring ownership of an invention to the client is to be implied depends on whether such a term is necessary having regard to the circumstances of the case. The case of *Techform Products Ltd. v. Wolda*, 2 C.P.R. (4th) 235, 5 C.P.R. (4th) 25, (Ont S.C.) (reversed on appeal on other grounds), established that terms may be implied in a consultancy contract based on usage or custom, as the legal incidents of a particular class or kind of contract, or based on the presumed intention of the parties to give business efficacy to the contract. In considering implied contractual terms based on business efficacy, the focus is on the actual intentions of the parties and not the intentions of reasonable parties. Business efficacy does not mean that a contract would be better if the term were implied. It means that the contract would not be effective unless the term were implied.

While there is no known industry practice, the relationship between the parties points to Gasmaster owning the patent rights. According to the Declaration of Abolghassem Aghtai, Dr. Movassaghi was hired by Gasmaster to develop a commercially viable combustor, and Gasmaster paid all expenses, in addition to Dr. Movassaghi's consultancy fee, and provided the facilities for the development. These facts indicate that ownership of the Multiple Plate Combustor invention is the *quid pro quo* that Gasmaster received in return for providing the finances and resources for the development of the invention. If Dr. Movassaghi were to maintain ownership of the invention then Gasmaster would receive nothing in return for its investment. It cannot be said that Gasmaster would have consented to pay all expenses for development including the consultancy fee with no expectation of ownership of the patent rights. Therefore, it can be concluded that the actual intention of the parties was that the ownership of the invention would be owned by Gasmaster.

Conclusion

By virtue of his employment by Powertech, and/or his consultancy with Gasmaster, the inventor, Dr. Mehrzad Movassaghi, effectively transferred all of his right title and interest in the Multiple Plate Combustor to either Powertech or Gasmaster, in both of which at the material time, Fama Holdings Ltd. owned at least a majority of the issued and outstanding shares. In September of 2004 all of the assets of Powertech and Gasmaster were purchased by Applicant, Fama Holdings Ltd. Therefore, Fama Holdings Ltd. has sufficient proprietary interest in the Multiple Plate Combustor to justify filing the present application.

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Mark Pospisilik, solicitor for Fama Holdings Ltd.

Vermette & Co.
200 Granville Street, Suite 230
Vancouver, BC
Canada V6C 1S4
Tel: 604 331 0381
Fax: 604 331 0382